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9 Attorneys for Plaintiff MESA/BOOGIE, LTD.

10 UNITED STATES DISTRICT COURT
 11 NORTHERN DISTRICT OF CALIFORNIA

RS

12 MESA/BOOGIE, LTD., a California
 13 corporation,

CASE NO. 07 4302

14 Plaintiff,) COMPLAINT OF PLAINTIFF
 15) MESA/BOOGIE, LTD. FOR
 16) PATENT INFRINGEMENT
 17 FENDER MUSICAL INSTRUMENTS)
 18 CORPORATION, an Delaware Corporation,)
 19 Defendant.)
 20)

DEMAND FOR JURY TRIAL

21
 22 Plaintiff MESA/BOOGIE, LTD. ("Mesa/Boogie" or "plaintiff"), by its
 23 undersigned counsel alleges and hereby complains against defendant FENDER MUSICAL
 24 INSTRUMENTS CORPORATION ("Fender" or "defendant") as follows:

NATURE OF THE COMPLAINT

25 1. This is a civil action for patent infringement arising under the laws of the
 26 United States, 35 U.S.C. §§ 1 *et seq.*

INTRA-DISTRICT ASSIGNMENT

2. Pursuant to Local Rule 3-2(c), because this is an intellectual property case, it may properly be assigned to any division in this judicial district.

PARTIES, JURISDICTION AND VENUE

3. Mesa/Boogie is a company organized and existing under the laws of California with a principal place of business at 1317 Ross Street, Petaluma, California and doing business in this district.

4. Upon information and belief, Fender is a company organized and existing under the laws of the State of Delaware with a principal place of business at 8860 E. Chaparral Road, Suite 100, Scottsdale, Arizona and conducts business, itself or through its agents, in this district.

5. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1331 and 1338.

6. Venue in this district is proper under 28 U.S.C. §§ 1391 and 1400, as Mesa/Boogie is informed and believes that a substantial part of the events giving rise to the claims alleged occurred in this district and because defendant is subject to personal jurisdiction in this district. Defendant maintains continuous commercial contacts with California and regularly conducts business in this district, including through the sale of infringing products.

OPERATIVE FACTS

7. Mesa/Boogie is an innovator, industry leader and manufacturer of the highest quality amplifiers for guitars and basses, and associated components. Mesa/Boogie distributes and sells its products worldwide, in interstate commerce, and in California.

8. Randall Smith is the president and founder of Mesa/Boogie, the innovator behind Mesa/Boogie's products, and is the named inventor of numerous patents.

9. On December 1, 1992, the United States Patent and Trademark Office duly issued to Randall Smith United States Patent No. 5,168,438 (the "438 patent"), entitled "Selectable Dual Rectifier Power Supply for Musical Amplifier." Randall Smith has assigned

1 all right, title and interest in the '438 patent to Mesa/Boogie, including the right to sue for all
 2 past, present and future acts of infringement.

3 10. In accordance with 35 U.S.C. § 287, Mesa/Boogie has marked its products
 4 with the '438 patent. Additionally, Mesa/Boogie had placed defendant on notice of the '438
 5 patent. To date, Fender continues to make, use, sell and offer to sell apparatuses that are covered
 6 by the '438 patent.

7 **COUNT ONE – PATENT INFRINGEMENT**

8 11. Plaintiff incorporates by reference all preceding paragraphs of this
 9 Complaint as if fully set forth herein.

10 12. Defendant has, and continues to, infringe the '438 patent by making, using,
 11 selling and/or offering for sale products that utilize the inventions covered by the '438 patent.

12 13. On information and belief, the past and continuing infringement of the
 13 '438 patent by defendant has been, and continues to be, with full knowledge of the '438 patent,
 14 making the infringement willful.

15 14. By reason of the acts of infringement by defendant, Mesa/Boogie has
 16 suffered, is suffering, and will continue to suffer damages in an amount to be proven at trial.
 17 Past and continuing infringement by defendant has irreparably injured Mesa/Boogie and will
 18 continue to irreparably injure Mesa/Boogie absent injunctive relief.

19 15. On information and belief, defendant will continue infringing the '438
 20 patent unless enjoined by this Court.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, plaintiff prays that this Court enter judgment as follows:

23 A. Permanently enjoining and restraining defendant, its directors, officers,
 24 employees, agents and all persons in active concert or participation with defendant from
 25 importing, making, using, selling, and/or offering for sale infringing apparatuses, methods
 26 and/or services covered by the '438 patent;

27 ///

1 B. Awarding to plaintiff damages compensating it as permitted by law for
2 defendant's infringement of the '438 patent;

3 C. Awarding to plaintiff enhanced damages resulting from the knowing,
4 deliberate, and willful conduct of defendant, pursuant to 35 U.S.C. § 284;

5 D. Finding that this is an exceptional case and awarding plaintiff its attorneys'
6 fees pursuant to 35 U.S.C. §§ 284 and 285; and

7 E. Such other and further relief as the Court deems just and proper.

8
9 Date: August 24, 2007

Respectfully submitted,

10 **WHITE & CASE LLP**

11
12 By 
13 WILLIAM SLOAN COATS
14 Attorneys for MESA/BOOGIE, LTD.
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JURY DEMAND

Mesa/Boogie, Ltd. demands a trial by jury on all issues so triable.

This the 2nd day of August, 2007.

Respectfully submitted,

WHITE & CASE LLP

By 

WILLIAM SLOAN COATS
Attorneys for MESA/BOOGIE, LTD.

1 **CERTIFICATION OF INTERESTED ENTITIES OR PERSONS**

2 Pursuant to Civil L.R. 7.1-1, the undersigned, counsel of record for Mesa/Boogie,
3 Ltd. certifies that the following listed party (or parties) may have a pecuniary interest in the
4 outcome of this case: Randall Smith. These representations are made to enable the Court to
5 evaluate possible disqualification or recusal.

6 This the 24th day of August, 2007.

7 Respectfully submitted,

8 **WHITE & CASE LLP**

9 By 

10 WILLIAM SLOAN COATS
11 Attorneys for MESA/BOOGIE, LTD.
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